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File No. O. Def. of Ind/41

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Legal DEPARTMENT

A BRANCH

Subject:—

Opinions Under

The Defence of India Act, 1940

P57F

Std. Sectt. Slip 24-B

11-4

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M.RD
20/6/45

Confl.
V.urgent.

Office of G's S.

In connection with the present Satyagraha campaign the question has been raised whether legislation should not be undertaken to effect immediate disqualification of the Chairmen and Members of Municipalities and District Local Boards who may be sentenced to imprisonment or restriction under the Defence of India Rules. It is pointed out that in one Province disqualification under the existing laws operates only if the sentence is over six months or for an offence other than an offence of a political character or an offence not involving moral depiquency.

The R.L.A. is requested to be so good as to say what the legal position in this respect is for all local bodies in this Province.

Sd. H.Ramos,
For Secy.to the Governor.

M.R.D.
30/4/56

U.R. to R.L.A. No.325, dated 30-12-40.

CONFIDENTIAL

Office of the R.L.A.

The Remembrancer of Legal Affairs is requested to be so good as to say what the legal position is for all local bodies in this province in the matter of disqualification of Chairmen and Members of local bodies who are convicted and sentenced to imprisonment or restriction under the Defence of India Rules in the present Satyagraha Campaign. The postion under the existing law is as under:-

2. In the case of the Municipal corporation for the City of Bombay, under section 16(1)(b) of the City of Bombay Municipal Act, 1888, a person shall be disqualified for being a councillor if such person has been sentenced by any court to imprisonment or whippling for an offence involving moral turpitude and punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, and if and so long as such sentence has not expired or such person s disqualification on account of such sentence has not been removed by an order of the provincial Government. Under section 17(a) any councillor who becomes disqualified for being a councillor for any reason mentioned in section 16 ceases to be a councillor and his office becomes vacant. Under section 18 provision has been made for an application to the Chief Judge of the Small Cause Court by any councillor who has become disqualified or any other councillor or by the commissioner and the decision of the Chief

Chief Judge is under that section conclusive.

3. In the case of Borough Municipalities under section 28 (1)(a)of the Bombay Municipal Boroughs Act. 1925, if any councillor becomes subject to any disqualifications specified in section 12,he shall be disabled from continuing to be a councillor and his office becomes vacant. Under sub-section (2)of section 28the authority competent todecide whether a vacancy has arisen is the Collector. He may give his decision suo motu o. on application made to him by any person and the councillor is not disabled under sub-section (1)from continuing to be a councillor. until the Collector decides that the Vacancy has arisen. An appeal is provided against the decision of Collector to the Provincial Government and the orders of the Provincial Government onsuch appeal are final. Under section 12(1)(a)(1) of the Act a person cannot become a councillor if he has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation. such sentence not having been subsequently reversed or quashed, if and so long as such a sentence has not expired or such person's disqualification on account of such sentence has not been removed by an order of the Provix.Govt.

4. In the case of District Municipalities under section 15 (2)(a)of the Bombay District Municipal Act, 1901,if any councillor becomes disqualified under sub-section(1),he is disabled from continuing to be a councillor and his office becomes vacant. Under sub-section(3)similar provision as in

(3) similar provision as in the case of the Boroug Municipalities has been made. The Collector is t the authority competent to decide whether a vacan ey has occurred. He can give his decision on application or suo motu. The vacancy does not arise until the Collector has given his decision and the councillor is not disabled from continuin to be a councillor till then. An appeal lies to the Provincial Government in the case of City Municipalities and to the Commissio- ner in other cases and the orders of Provincial Government or the Commissioner are final. Under section 15(1)(a)(i) a person cannot be a councill who has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishabl with imprisonment for a term exceeding six months, or to transportation, such sentence not having bee subsequently reversed or quashed, if and so long as such sentence has not expired or such person's disqualification on account of such sentence has not been removed by an order of the Provincial Government.

5. In the case of Local Boards under section 7(1)(c)(i) of the Bombay Local Boards Act,1923 no person may be a member of a local Board who has been sentenced by a criminal Court to imprison ment or whipping for an offence punishable with

Such person's disqualification on account of the sentence has not been removed by an order of the Provincial Govt.

imprisonment for a term exceeding six months, or to transporation, such sentence not having been subsequently reversed or quashed, if and so long as such sentence has not expired or such person's disqualification on account of the sentence has not been removed by an order of the Provincial Govt. under sub-section(3) of section 9 of any person elected or appointed to a Local Board is subject to any of the disqualifcations specifed in that section, his seat shall be ddmed to be vacant. Under Sub-section(4) if any question, dispute or doubt arises whether a vacancy has occurred the orders of the Commissioner in the matter shall be fimhal.

6. In the Case of Village Panchayats under section 8(c) of the Bombay Village panchayats Act, 1933, no person shall continue as a member of a panchayat who has been sentenced by a Criminal Court to imprisonment or whipping for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or remitted, so long as such sentence has not expired, unless he has been relived from such disqualification by an order of the Provincial Government. Under section 9A if any member was subject to, or has incurred, any of the disqualification mentioned in section 8, the Collector is to declare that such member shall not continue to be a member of the panchayat. His declarration is final.

7. It would appear from these provisions that in the case of members of the Municipal Corporation

Municipal Corporation for the City of Bombay and the members of the Village panchayats such members will be disqualified from contnuing as members if they are sentenced to imprisonment or whipping for offences which are punishable with imprisonment for a term exceeding six months and which involve moral turpitude. Most of the offences under the Defence of India Rules are punishable with imprisonment for a period exceeding six months. The expression 'moral turpitude' has not been defined anywhere in the Act and it is doubtful whether the offences punishable under the Defence of India Rules can be held to involve moral turpitude (See R.L.A.'s opinions No.1860dated 5th April 1937and No.1467 dated 7th February 1940). As regards members of other local bodies viz. members of the

Borough Municipalities, District Municipalities and Local Boards, their seats will become vacant when they are convicted of any offence punishable with imprisonment for a period exceeding six months. Members of local bodies against whom only restriction or detention orders are passed under the Defence of India Rules, such as orders under rule 26 of the said Rules, will not however, lose their seats by reason of such orders being passed against them as they cannot be said to have been sentenced to imprisonment with the meaning of the provisions of the Acts referred to above. The Chairman or Presidents of the local bodies lose their seats as such automatically when they are disqualified from continuing as members of such bodies.

8. It may be pointed out that the various Acts relating to the local bodies contain provisions that if a member or president is absent from a certain number of meetings his seat shall become vacant. The position under these provisions is explained in paragraphs 9 to 12.

In the case of the Municipal Corporation for the City of Bombay, under section 17(b) of the City of Bombay Municipal Act, 1888, any councillor who absents himself during three successive months from the meetings of the Corporation, except from temporary illness or other cause to be approved by the Corporation, ceases to be a councillor and his office becomes vacant. The expression "absents himself" has been held to mean something more than the expression "is absent" and implies that

P.T.O.

"he remains absent" and implies that the absence must be voluntary or deliberate on the part of the member concerned. A person who is unable to attend a meeting by reason of his imprisonment or detention will not therefore incur disqualification under this provision.(cf.R.L.A.'s opinion No.4922,dated 29th September 1932(1901) 1 Chancery D.page 728) Under section 17(d) however any councillor who absents himself from or is unable to attend the meetings of the Corporation during twelve successive months from any cause whatever whether approved by the Corporation or not, ceases to be a councillor. Under this privision a member who is absent

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from the meetings of the Corporation during twelv successive months because of his imprisonment or detentions will lose his seat as a councillor.

10 In the case of Borough Municipalities under section 28(1)(d)of the Bombay Municipal Boroughs Act, 1925, any councillor not being a president or vice-president, who absents himself during four successive months from the meetings of the municipality, except with the leave of the municipality is disabled from continuing to be a councillor and his office becomes vacant. Under section 22 of the Act, every president or vice-president who for a period exceeding one month, absents himself from the municipal borough in such manner as to be unable to perform his duties as such president or vice-president ceases to be a president or vice-President. Similar provisions are contained in sections 15(2)(c)and 23(5)of the Bombay District Municipal Act,1901. The words used in these provisions are "absents himself" and for reasons stated in the case of the councillors of the Municipal Corporation of Bombay in para.9above, the members or presidents o vice-presidents of these Municipalities will not lose their seats under these provisions.

11. In the case of the members of the District Local Boards,under section 30(1)(c)of the Bombay Local Boards Act, 1923,any member of a local board who is absent for more than four consecutive months from the district for which the board

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from the district for which the board is established unless leave so to absent himself which shall not exceed six months, has been granted by the board, or absents himself for six consecutive months from meetings of the board without the leave of of the board shall cease to be a member and his office shall become vacant. In the first case the words used in this provision are "is absent" and if any member, therefore, is imprisoned or detained for more than four consecutive months in a district other than the district for which the board of which he is a member is established, he will be held to have incurred a disqualification under this provision unless leave as provides in the section is

M.R.D.

gtanted to him. In the next case, namely of absence from meetings, the words used are "absents himself" and hence there will be no disqualificatio in the case of any member who is imprisoned or detained and is, therefore absent from the meetings. Similarly section 25of the Act provides for disqu qualification of a president or vice-president who absents himself from the district and there will b be, therefore, no disqualification under this section in the case of such persons imprisoned or detained under the Defence of India Rules.

12. In the case of the members of the Village panchayats, section22(1)(a) of the Act provides tha a member who is absent for more than four consecutive months from the village unless leave not exceeding six months has been granted by the panchayat shall cease to be a member. The words used in this case are "is absent" and a member who is imprisoned or detained outside the vilage for the period stated in the above provisions without the leave of the panchayat will incur a disqualification under the said provisions. Section22(1)(b) provides that a member who absents himself for six consecutive months from the meetings of the pan panchayat without the leave of the panchayat shall cease to be a member. As the words used in this provision are "absents himself", there will be no disqualification under this provisions if a member is imprisoned or detained for six months or more-

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Sd/-

Remembrancer of Legal Affairs.

U.R. to Secy.To the Governor No.30-Cons'l ,dated 17thJanuary 1941.

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Secret.

EXPRESS LETTER.

NO.571-OR/40-G.G.(D.C)
Govt. of India.
Defence Coordination Department.
New Delhi, the 28th February 1941.

From

The Secretary to the Government of India,
Defence Coordination Department.

To

The Secretary to the Government of Bombay,
Revenue Department.

Subject:- Delegation of powers to the Collector of Ahmednagar district under rule 79 of the Defence of India Rules to enable him to requisition land in Ahmednagar for ranges.

Plaease refer to the correspondence ending with this Department letter No.571-OR/40-G.G.(D.C.) dated the 17th February 1941 on the above subject.

2. It appears that Southern Command contemplate the requisitioning under Defence of India Rule 79 of additional land required in connection with target and field firing ranges, comprising not only the target and field firng area proper but also a danger area surrounding it. They state that there are in this area various kutcha roads and footpathes over which the public have a right of way and they have requested that the Collector of Ahmednager, should be given powers under Defence of India Rule 80 to enable him to prohibit the exercise of such rights of way.

3. The Government of India think that it would not be appopriate, in view of the terms of rule 80, to use that rule in respect of land requisitioned undder rule 79. They are not fully apprised of the local circumstances, but they would suggest that one of the following alternatives might meet the case;

(1) the Collector could provide in his order of requisitioning under rule 79 that the whole of the area, including

~~including~~ roads and footpaths, is requisitioned on behalf of the CentralGovernment, that the military authorities will take possession of the area on such and such a day, and that on and from that day the area will be under the exclusive use and occupation of the military authorities. If the military authorities put up physical obstacles on the road and footpaths, as well as the usual warning notice, it would appear that any member of the public who thereafter attempted to use any of the roads or footpaths without the consent of the military authorities would be a trespasser and would be prevented from passing.

(2) Orders could be issued under sub-rule(1)of Defence of India Rule 12 to supplement the requisitioning order under rule 79.

4. The Government of India would be grateful if the Provincial Government would cause enquiries to be made and report what would in their view be the best way to proceed.

Issue of the above has been authorised.

Sd---------

Under Secretary to the Government of Ind

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R.I.No.2791
24-3-41

Subject:-Lands, Ahmednagar.
Acquisition of-

Delegation of powrs to the Collector of Ahmednagar district under rule 79 of the Defence of India Rules to enable him to requisition land in Ahmednagar or ranges.

Submitted.

1. In their letter No. 571-OR/40-G-G.(D.C.), dated the 28th Feb.1941. at P.63 ante the Government of India suggest that in a case where land is requisitioned under rule 79 of the Defence of India Rules and it is desired that the public should be stopped from exercising any right of way over such land. the Collector should provides in his order of requisitioning under rule 79 that that the whole of the area, including roads and foot-paths, is requisitioned on behalf of the Central Government. that the military authorities will take possession of the area on such and such a day and that on and from that day the area will be under the exclusive use and occupation of the military authorities. The Govt. of India further suggest that if the Military authorities put up physical obstacles on the roads and footpaths, as well as the usual warning notices, any member of the public who thereafter attempted to use any of the roads or footpaths wiethout the consent of the military authorities would be a trespasser and would be prevented from passing. In their opinion orders could be issued under sub-rule (1) of rule 12 of the Defence of India Rules to supplement the requisitioning order under rule 79.

2. The Collr. of Ahmednagar in his letter dated 15-3-41 at P.67 ante doubts whether public roads can be requisitioned under rule 79 and public rights of way over them can be extinguished by an order made

order made under the rule. He therefore thinks that order under rule 12 of the Defence of India Rules will be necessary to extinguish or restirict the rights of way over lands requisitioned under rule 79 and that until such an order is passed the rights remain intact. The question which therefore arises for R.L.A's consideration is whether under rule 79 of the Defence of India Rules it is possible to requisition any land <u>including roads and foot-paths</u> comprised therein and prohibit the public from using any such roads and foot-paths.

3. Sub-rule(1)of rule 79of the Defence of India Rules gives power to the Central Government to requistion by ofder in writing any land, while sub-rule(2)gives power to the Goernment to dispose of and use such land in such manner as it thinks fit. The word "land" is not defined in the Defence of India Act, 1939 or in the rules made thereunder or in the General Clasues Act,1877. In its general sence, "land" as a corporeal thing comprehends not only the soil but "every species of ground on earth,meadows, pastures, woods, moors, water, marshes furze and earth; it includes houses, mills,castles, buildings and besides an indefinite extent upwards, it extends downwards to the globe's centre" Wharton's Law Lexicon. It will include all roads and foot-paths therein and accordingly it would be open tothe Government to comprise them in an order of requistion under rule 79. Under sub-rule(2)of rule 79 Government has power to dispose of and use any land requisitioned under the rule in such manner as it thinks fit. This

M.R.D.
11/4/56

Office of the H.L.A.

The question raised for consideration in this case is as regards the procedure to be followed for prohibition of the exercise of the rights of way which the public have over any roads and foot-paths on lands requisitioned under rule 79 of the Defence of India Rules. In its letter dated the 28th February 1941, the Government of India has suggested two alternatives to achieve the object in view, namely:-

(1). the Collector should provide in his order of requisitioning under rule 79 that the whole of the area, including roads and foot-paths, is requisitioned on behalf of the Central Government, that the Military authorities will take possession of the area on such and such a day and that on and from that day the area will be under the exclusive use and occupation of the Militaty authorities;

(2) Orders should be issued under sub-rule (1) of rule 12 of the Defence of India Rules to supplement the requisitioning order under rule 79.

The Government of India has requested this Government to cause enquiries to be made and report what would in the view of this Government be the best way to proceed.

2. For reasons stated in his letter dated the 15th March 1941 at pages 67-70 ante, the Collector

~~the Collector~~ of Ahmednagar doubts whether public roads can be requisitioned under rule 79 and public rights of way over them can be extinguished by an order made under the rule. He seems to hold that the first alternative suggested by the Government of India is not, therefore, legally feasible. He is of the opinion that recourse to the second alternative namely an order under sub-rule(1)of rule 12 is the only remedy open in such cases.

3. The question for consideration of Remembrancer of Legal Affairs is whether the view taken by the Collecto that the first alternative suggested by the Government of India is not legally feasible is correct.

4. Sub-rule(1) of rule 79 of the Defence of India Rules

gives power to the Central Government to requisition any land and sub-rule(2) of the rule gives power to Government to dispose of and use such land in such manner as it thinks fit. The expression "land" is not defined in the Defence of India Act under which the rules are made. In its general sense, "land" as a corporeal thing comprehends not only the soil but "every species of ground on earth, meadows, pastures, woods, moors, water, marshes, furze and earth; it includes houses, mills, castles, buildings and besides an indefinite extent upwards, it extends downwards to the globe's centre."-Wharton's Law Lexicon. It will include all roads and foot-paths over which the public have a right of way and it would, therefore, be competent for Government to include them in the order requisitioning land under sub-rule(1)of rule 79. Sub-rule(2) of the rule gives wide power to the Government to use the requisitioned land in any manner it thinks fit and will cover any orders which have the effect of prohibiting or restricting the exercise of the rights of way over the land. There is nothing in rule 79 to indicate that Government cannot, by requisitioning any land under this rule, stop rights of ways over any road or paths on such land. The view taken by the Collector is, therfore, not correct.

5. It follows, therefore, that both the alternatives suggested by the Government of India are legally feasible. It is for Revenue Department to

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Revenue Department to consider which of the two alternative courses is more suitable from the administrative point of view.

Sd/-
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Remembrancer of Legal Affairs.

U.R. to R.D.,No.166-Confl., dated the 1st April 1941. M.R.D. 21/4/56

R.I.NO. 3057/2.4.41.

Submitted.

The question for R.L.A.'s consideration is whether there is any objection to the Collr. passing an omnibus order substituting the revised condtion (iii) at P.8 ante for the existing condition (P.42 ofR.D. file 4288/39) in respect of all cases of requisitioning of lands to which the existing condition has been applied.

2. As in each case in which lands have been requisitioned under the rules a separate order has been passed imposing the existing condtion(iii) it would be desirable to impose the revised condition in place of the existing condtion also by a spparate order passed in each such case. The order imposing the revised condtions should be communicate to the parties whose lands have been requisitioned.

Sd/-
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S.A.S.

Sd/-
9/4/

D.S.

Sd/-
9/4

R.L.A.

Sd/-
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M.R.D.
21/4/56

R.L.A.'s Office.

As in each case in which lands have been requisitioned under the rules a separate order has been passed imposing the existing condition(iii), it would be desirable to impose the revised condition also by a separate order passed in each such case. The order imposing the revised condtion should be communcated to the parties whose lands have been requisitioned.

Sd/-
15/4

Remembrancer of Legal Affairs.

U.R. to R.D. 3320 dated the 16th April 1941.

M.R.D.
21/4/56

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Defence of India Rules.
Prosecutions under Provisions
of parts XV and XVI of

Government of Bombay.
Home Department(Political)-War.
Resolution No. S.D./W-985.
Bombay Castle, 1st April 1941.

Read Government Resolution, Home Department (political)-War, No.S.D./W-3476, dated the 8th November 1940.

Letter from the Government of India, Department of Commerce, No.16(1)-E.T./41, dated the 7th February 1941:-

"In continuation of this Department letter No. 66(27)-Tr(W)/40dated the 30the September 1940, I am directed to say that the present procedure in regard to prosecutions under parts XV and XVI of the Defence of India Rules is that the Government of India after consulting their Solicitor at the Headquarters, issue the necessary order to prosecute to to the Controller of Enemy Trading who then refers the matter to the Provincial Government. It has now been suggested that it will be more convenient if after receipt of such orders, the Controller of Enemy Trading is permitted to give necessary instructions, without prior reference tothe Privincial Government concerned, to the local Public Prosecuter direct and to ask the Public Prosecutor, if he is in doubt, to refer cases backthrough the Controller to this Departmnet. On such references, the Government of India will again consult their Solicitor at Headquarters and issue necessary directions to the Controller who will instruct the Public Prosecutor further in accordance with such directions.

2. The Government of India hope that the Provincial Government will have no objection to this procedure

P.T.O.

to this procedure and they will be glad if the Provincial Government will confirm the above arrangement. Meanwhile, in anticipation of the formal approval of the Provincial Government, the Controller of Enemy Trading is being instructed to follow the above procedure forthwith."

Letter to the Government of India Department of Commerce, No.S.D./W-984, dated the 1st April 1941;-

(3)

"with reference to your letter No.16(1)-R.T./41, dated the 7th February 1941, I am directed to state that the Government of Bombay has no objection to the adoption of the revised procedure suggested therein in regard to prosecutions under parts XI and XVI of the Defence of India Rules."

RESOLUTION:- Copies of the foregoing correspondence should be forwarded to the Commissioner of Police, Bombay, all District Magistrates and all Departments of the Secretariat(except the separate Department)for information and guidance.

By order of the Governor of Bomba

Sd/-
For joint Secretary to the Government of Bom bay , Home Department.

To

The Commissioner of Police, Bombay,

All District Magistrates,

All Departments of the Secretariat(except the Separate Department).

Copies to:-
The Commissioners of Divisions,

The Inspector General of Police, Province of Bombay,

The Secretary to the Govenor,

The Deputy Inspectors General of Police.

All Superintendents of Police.

M, R. D.
21/4/56

R.I. NO. 2421
14/3/41

Submitted.

2. On 23-9-1040, Mukta Dagdu Abhang, a peon in the P.S.D. & gave a notice to the D.M., Poona, of his intention to change his name. A smilar notice was also published in Bom.Govt.Gazette Part II dated 31 st Oct. 1940. The question for consideration of the R.L.A. is whether the notice can be held to be in order as required by the P.&.S.D. notification No. 3327/34-W., dated 20th Oct. 1939, issued under the Defence of India Rule 29(2)

3. Sub-rule(2)of Rule 29 of the Defence of India Rules, provides inter alia that no British subject shall assume any name other than that by which he was ordinarily known unless at least one month before the day on which he first assumes that other name he has given to the Provincial Govt. a notice specifying details as stated in clauses(a) and(b)and has complied with such orders in respect of such notice, including orders for giving public intimation of his intention to change his name, as the Provincial Govt. may give. Clause(a) of the P.&.S.S. Notification No.3327/34-W,dated 20thOct. 1939,directs that such notice shall be given through the Commr. of Police, Bombay, if the person giving the notice resides in the City of Bombay, and through the Dist.Magistrate concerned, if such person resides elsewhere "Residence" means living or dwelling in a certain place permanently or for a considerable length of time. The ~~place~~where

The place where a man makes his house or where he dwells permanently or for an extended period of time(Black's Law Dictionary, 3rd Edn., P.1543;Pl.see Mulla's Civil Procedure Code,10th Edn P.113). It appears that Mukta Dagdu Abhang has a house in the Junner taluka in the Poona Dist. He could have therefore given notife of his intention to change his name to the Govt. of Bombay through the District Magistrate, Poona. The notice given in this case is addressed to the Collector of Poona and not the Govt.of Bombay as required by clause(a) of the notification referred to above. The notice cannot therefore be held to be in order. Through the direction issued by the Provl.Govt.in respect of such notice are not complied with there would appear to be no objection,if the P.&.S.D. thinks it necessary to relax the provisons of the order in the present case.

Sd/-
23/3

A.S. It is true as observed by D.S.,P. &S.D. at P.4 ante that it is not for Govt. to see whether a notice was properly given or not and the person giving the notice takes the responsibility; but since Abhang has applied for changing his name in the service book Govt. will have to consider whether Abhang has lawfully changed his name. Under sub.rule(2)of rule 29 of the Defence of India Rules no British subject can change his name unless at least one month before the day on which he assumes another name he has given to the Provl.Govt. a notice specifying details

(A meant opinion given under D.O. I.Rule29 is put up below-slip ipO-G.D. of I/40 Pl.put up R.L.A.'S opinion given in 1937-38 which it is held that it is efect. to any person to change his name at his pleasure.

Sd/-
26/3

M.R.

Office of the R.L.A.

It is true that Government as the employer of a Government servant who has changed his name is not bound to go into the question of the validity or otherwise of the change in name as reported by the employee and would be justified in granting requests like those made at page 1 ante on being satisfied as to the identity of the applicant and his actual nuser of the new name assumed by him (cf.para.4 of R.L.A.'s U.R. to H.D.No.133 Confl. dated the 24th June 1937). Since, however, in this case the notice of change dated the 23rd September 1940 appears to have been given to the Collector of Poona and not to Govenment either through the Commissioner of Police, Bombay, or through the District Magistrate, Poona, and moreover the notice published in the Bombay Government Gazette, dated the 31st October 1940)P.2082) does not specify the address of the applicant's place of residence or place of abode in British India as required by Defence of India Rule 29(2)read with P.& S.D. Notification No.3327/34-W, dated the 20th October 1939, it is desirable that the P.&S.D.as the administrative department responsible for enforcing the Defence of India Rules should take such action as may be deemed necessary toensure strict compliance with the the Defence of India Rules29(2)and the Notification thereunder.

Sd/-29/4

P.T.O.

/(2)

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No. 2861 dated the 30th April 1941.

M.R.D.
21/4/56

Office of the R.L.A.

R.L.A. is requested to advise whether "Benger "Benger's Food" and "Marmite" are medicines. This appears to be a question of fact rather than of law. It transpires from the letter of the Honorary Secretary, Pharmaceutical and Allied Manufacturers' and Distributiers' Association that both articles are classified as patent foods and not medicines.

2. Since Benger's Food possesses nutritious properties and is largely used for children, it might quite possibly be regarded as a medicine within the meaning of the Schedule to the Government of India (Commerce Department) Notification No. No.501-Ind.-War(11)/40, dated 20th May 1940. Marmite however, would appear to be essentially a patent food and nothing more. It is a vegetable extract used not only for soup purposes but also for sandwiches and flavouring other foods. As, however, this is a question of fact it is for the G.D. to decide.

Sd/-
4/6

Remembrancer of Legal Affairs.

M.R.D.
21-4-56

U.R. to G.D., No.5136, dated the 6th June 1941.

R.I. NO. 5145
9-6-41.

Submitted.

One Mr. Dubash was granted a building lease of plot No.8/2 in Block V in the BackBay Reclamation Scheme on condition inter alias that the land would be used exclusively for residential purposes. In contravention of that the lessee used the building for purposes of a paying guest establishment. Govt. was approached for permission to extend the user of the premises and had thought of granting it on payment of premium and made an offer accordingly. In the meanwhile the lessees of neighbouring plots complained that the paying guest establishment. Govt. was approached for permission to extend the user of the premises and had thought of granting it on payment of premium and made an offer accordingly. In the meanwhile the lessees of neighbouring plots complained that the paying guest establishment was a nuisance and that Govt. could not permit such user. On the advice of the Adv. General that the lessees of adjoining plots were antitled to the benefit of the restrictive covenan contained in the lease of said plot No,8/2,Govt. revoked the offer for permission to enlarge the user made to the lessee, Mr,Dubash and a notice was served accordingly by the Collector of Bombay on 6-5-1941 and Mr.Dubash in his turn has also asked the landlady todiscontinue the establishment It appears now that the Brigadier Commander, Bombay area has requested Govt. that the use of the plot

~~that the use of the plot as~~ a paying guest establishment might be permitted to be continued for the duration of the war. He states that out of the 36 persons living in the stablishment, 30 belong to the Military on Naval Forces for whose accommodation he is responsible, and that there is no other suitable accommodation for them in Bombay. In these circumstances the R.L.A. is requested to advise what action can be taken under the Defence of India Act to comply with the needs of the Military authorities (Vide A.R.'s minute dated 6-6-41 at PP.121 and 124 ante).

2. Sub-rule(1) of Rule 76 of the Defence of India Rules empowers the Provl.Govt. by order in writing to requisition any building, part of a building or other premises, together with any fixtures, fittings, furniture etc. and to make suchfurther order as appears necessary or expedient in connection with the requisitioning; sub-rule(2) empowers the Provl.Govt. to dispose of and use such premises in such manner as it may consider necessary or expedient. It will therefore be possible under this rule for the Provl.Govt. to requisition the premises and lease them to the landlady Mrs.Scott for the purposes of a paying guest estblishment or hotel mainly for Military Officers. Any action taken by the Provl.Govt. under rule 76 would be protected against a suit of any kind by virtue of section 17 of the Defence of India Act 1939.

Sd/-
9/6/41

C.S. The postion stated above is not free from difficulty The fact that Rule 76 of the Defence of India Rules empowers the Provl.Govt. to take over the building in plot 8-2- and then make use of it in such manner as it deems necessary or expedient would not, it appears, by itself have the

M.RD

39

Office of the Rem.

Sub-rule(1) of rule 76 of the Defence of India Rules empowers the Provincial Government by order inwriting to requisition any building part of of a building or other premises, together with any fixtures, fittings, furniture, etc.and to make such further order as appears necessary or expedient in connection with the requisitioning; sub-rule(2) empowers the Provincial Government to dispose of and use such premises in such manner as it may consider necessary or expedient. It will therefore be possible under this rule for the Provincial Government to requisition the premises and lease them to the landlady Mrs.Scott for the purposes of a paying guest establishment or hotel mainly for Military Officers. Any action taken by the Provincial Government under rule 76 would be protected against a suit of any kind by virtue of section 17 of the Defence of India Act,1939.

Sd/-
13/6

Remembrancer of Legal Affairs.

U.O. to R.D.,No.5307,dated the 16th June 1941.

M.R.D.
21/4/56

R.I.NO.212-L.

6/9/41

Submitted.

In response to a telegram from the Bombay Government the Government of India have stated in their telegram at page 1 ante that powers under the Defence of India Rules 81(2)(a) and (b) have already been delegated to the Provincial Governments in respect of charcoal, stem coal and fire-wood under their notifications Nos.501-Ind-War (11)/40 dated 25th May 1040 and 501-Ind-War -(19)/40 dated 29th June 1940 and that it is not clear what other powers under the rules are wanted by the Provincial Government.

2. The telegram sent by the Bombay Government is not amongst the papers sent by G.D. and in the absence of that telegram it is not possible to say what other powers this Government exactly wanted. But from the note of Secretary, G.D. it appears that what the Bombay Government wants is the power to requisition stocks of coal not kept for sale and distribute them to needly mills. The question therefore for consideration is whether under the Government of India notifications referred to, namely, the Government of India Notifications Nos.501-Ind.War(11)/40dated 25th May 1940 and and 501-Ind.War (19)/40dated 29th June 1940 the power to requisition coal not kept for sale and distribute it amongst needy persons is also delegated to the Provincial Govt.

3.

3. The first Government of India notification referred to in the Government of India's telegram, namely, No.501-Ind-War (11)/40 dated the 25th May 1940 delegates to the Provincial Government the power concerred on the Cental Government by cl.(b) of rule 81(2) of Defence of India Rules. to provide by order for controlling the prices at which the articles specified in the Schedule to the notification may be sold otherwise than in a primary wholesale market and also the power to provide for any incidental and supplementary matters. The second notification, namely, No.501-Ind-War (19)Ø40 dated 29-6-1940 delegates to the Prov. Govt. the power conferred on the Central Government by clause(b) of rule 81(2) to provide by order for prohibiting the withholding from sale, of articles kept for sale, and for requiring articles kept for sale to be sold and also the power to provide for any incidental and supplementary matters. The articles in respect of of which these powers are exercisable by the Provincial Government are those specified in the Schedule to the first-mentioned notification. Charcoal, stem-coal and fire wood are amongst the articles specified in that Schedule. Under these notifications it would be, competent for Government to control the prices of charcoal, steam coal and fire-wood and to prohibit persons from withholding the sale of these articiles or direct that those articles should be sold <u>provided they are kept for sale</u>. It is not competent under these notification to take possession of any coal wagans and ration them or to requisitions any stocks of coal and distribute the same to needy mills for this purpose it will be necessary to obtain from the Central Government powers to make order regarding of the matters referred to in clause(a) of rule 82(2), namely

M.R.D
21/4/56

Office of the R.L.A.

The first Government of India notification referred to in the Government of India's telegram, namely, No.501-War(11)/40 dated the 25th May 1940 delegates to the Provincial Government the power conferred on the Central Government by clause(b) of rule 81(2)of the Defence of India Rules to provide by order for controlling the prices at which the articles specified in the Schedule to th notification may be sold otherwise than in a primary wholesale market and also the power to provid for any incidental and supplementary matters. The second notification, namely, No.501-Ind-War (19)/40 dated29th June 1940 delegates to the Provincial Government the power conferred on the Central Government by clause(b) of rule 81(2) to provide by order for prohibitng the withholding from sale, of articles kept for sale, and for requiring articles kept for sale to be sold and alsothe power to provide for any incidental and supplementary matters. The articles in respect of which these powers are exercisable by the Provincial Governme are those specified in the Scheduleto the first-mentioned notification. Charcoal, steam-coal and fi fire wood are amongst the articles specified in t that Schedule. Under these notifications it woul be competent for Government to control the prices of charcoal, steam coal and fire-wood and to prohi bit persons from withholding the sale of these art cles or direct that these articles should be sold provided they are kept for sale.

It is not competent under these notifications to take possession of any coal wagens and ration them or to requisition and stocks of coal and distribute the same to needy mills. For this prupose, it will be necessary to obtain from the Central Government powers to make orders regarding other matters referred to in clmause (a)of rule 82(2),namely,regulating the keeping, storage, movement, transport, distribution,disposal, acquisition, use or consumption etc. and also the powers referred to in clause(f)of the rule to make orders regarding any incidental and supplementary matters in relation to the above matters. The postion may be explained to the Government of India if necessary, and that Government may be asked to delgate the powers to make orders in respect of all the other matters referred to in clause(a)of rule 82(2)and under clause(f)of the said rule.

Sd/-
8/9
Remembrancer of Legal Affairs.

U.R. to G.D. No.262-L dated the 8th September 1941.

M.R.D.
21/4/56

In its letter No. 1055-M/41 dated 29-9-41 at P.1 ante the Govt the of India has asked the Provincial Government to give its opinion on the suggestion made therein, namely, to make a rule on the lines of rule 45-A of the Defence of India Rules to dispense with the requirement of publicity of purpose of acquisition where military and defence requirements are concerned. The R.D. agrees with the suggestion made but has referred the papers to the R.L.A. for advice on the question whether the proposed rule can be legallky made.

2. Section 2 of of the Defence of India Act, 1939 gives power inter alia to the Central Government to make rules for securing the defence of British India, the public safety or the efficient prosecution of war. The proposed rule is intended to dispense with the publicity of the purpose of acquisition in cases in which lands are needed for a military or a defence purpose. As such publicity might help the enemy and consequently prove prejudicial to the defence of British India, the public safety or the efficient prosecution of the war the proposed rule would necessarily be with in the rule-making power of the Central Government and in virtue of the provisions contained in section 3 of the Act override the provisions of sections 4and 6 of the Land Acquisition Act in so far as those provisions require the publication of such purpose.

3. It must be presumed that the Govt. of India has considered the question of the validity of the proposed rule.

What it apprently wants is the Provincial Govt.s opinion on the suggestion made from the administrative point of view.

Sd/-
9/10

I agree

A.L.R. The view tanen at 'A'on 4 ante in the R.D. office note is correct

Sd/-
10/10

R.L.A. I think we should also examine the laggality of the G.of I.'s proposal to frame a rule. If I remember right a similar question arose in respect of acquistion of land for an aerodrom at Juhu. Please put up the file.

Sd/-
10/10

Please see R.L.A.'s opinions No.292 confl dated 28-5-41 ~~and~~ P.5
17-confl.dated 6-6-41 in file lag.II/41 P.11

Sd/-
11/10

A.L.R. For the reasons stated in para 2 of my notice dated 9/10/41 G.of I. proposal to frame the rule is legaly feasible.

M.R
24/4/6

Office of the R.L.A.

Section 2 of the Defence of India Act, 1939, gives power inter alia to the Central Government to make rules for securing the defence of British India, the public safety or the efficient prosecution of war. The proposed rule is intended to dispense with the publicity of the purpose of acquisition in cases in which lands are needed for a military or a defence purposes. Such publicity might help the enemy and consequently prove prejudicial to the defence of British India, the public safety or the efficient prosecution of the war. The proposed rule is thus within the rule-making power of the Central Government. Section 3 of the Defence of India Act provides that any rule made under section 2 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Under this section the provisions of the proposed rule will over-ride the provisions of sections 4 and 6 of the Land Acquisition Act in so far as they require the publication of the purpose of the acquisition. The view taken at 'A' on page 4 ante in the R.D.office note is correct.

Sd/-
13/10
Remembrancer of Legal Affairs.
Sd/-
13/10

M.R.D.
24/4/56

U.R. to R. D. No.328-L dated the 14th October 1941.

Submitted.

The Joint Secretary to the Govt. of Bombay, Home Department(A.R.P.) forwarded to the five Municipalities in Bombay Suburban District and to theMunicipalities of Thana and Poona, the copie of the outline of Schemes received from the Govt. of India in respect of measures to be adopted for the protection of persons and property against air attack(vide ppendices A, C, D and E) and requeste each of them to take action as early as possible i respect of each of the Schems on the lines indica- ted in paras.3to 6 of letter No.S.D./A.R.P.-389, dat dated 16-7-41. The action which the Municipalitie have been asked to take in hand pertain to the following matters, namely:-.

Vide PP. 5-17 at slip A

PP.1-3 at slip A

(1) Care of persons rendered homeless by reason of air attack;

(2) Repair of slightly damaged buildings;

(3) Extensive demolition and demolition in volving the use of explosives; and

(4) Clearance of debris caused by air attack.

In respect of (3)and(4)above, only information has been called for from the Municipalities concerned as to whether stocks of high explosives and other material for demolition work are availa- ble with them and also whether they have available with them staff for carrying out heavy demolitions and clearance of debris from streets etc. As regards(2), the Municipalities are asked to issue

are asked to issue necessary standing orders to the staff as to the steps to be taken in the event of damage of buildings by enemy action. In respect of(1)above, the Municipalities are required to prepare a scheme for a camp for accommodating persons with suitable water and sanitary arrangements etc.

2. From the office note of H.D. (Special)A.R.P.,dated 12-12-41, it appears that in reply to H.D.(Political) A.R.P. letter No. S.D./A.R.P..389,dated 16.7.41, the Ghatkopar Municipality stated that as the matters regarding air raid and the Schemes to be worked out in respect of the same pertain to the Defence of India, the Municipality should not be required to carry out the proposals referred to in the said H.D.letter. It further appears that Parle-Andheri Municipality also recorded the said letter, and perhaps does not propose to take any action as required therein. A(H) is of opinion that the said two Municipalities should be informed that unless a satisfactory reply was received within a month, Govt. would undertake woring out of a scheme and the cost will be charged to them under the Defence of India Act. A(R),howver, suggests that before the Municipalities are written to,it should be examine whethere the scheme could be carried out by Govt.at the cost of the Municipality.

*PP.3/5 ante

£Slip A

(resolution of Municipality is not on record)

'११-२ ante

P.2Do

3. Rule 51F(3)of the Defence of India Rules

provides that the appropriate Govt.may, by order, require any local authority to take, within such period as may be specified in the order, such measures as may be so specified, being measures which are in the opinion of that Govt. necessary for the protection of persons and property under the control or within the jurisdiction of such authority from injury or damages,or for ensuring the due maintenance of the vital services of the authority in the event of hostile attack, and thereupon it shall be the duty of the localauthority to comply with the order. Under clause(3)(b)of Rule 81F the funds of thelocal authority shall be applicable to payment of charges and expenses incidental to such compliance. The measures referred to in para 3to 6 of H.D.(Poll)A.R.P. letter No.S.D./A.R.P.-289,dated 16.7.41 and wich the Ghatkopar and Parle-Andheri Municipalitesare called upon to take in hand are measures which the Provincial Govt. consider to be necessary for the protection of persons and property within the jurisdiction of theseMunicipalites from injury or damage as contemplated by rule 57f(3) of the Defence of India Rules. consequently, if after the issue of any such order under sub-rule(3),the municipalites concerned fail to to take the required measures measures within the period specified, under clause (4)of rule 81F it will be competent for the Provincial Govt. to cause the said measures to be taken or amplified and to direct that the cost thereof shall be defrayed out of the funds of the municipalities concerned.

4. It is no doubt true that as contended by Ghatkopar Municipality the Schems for camps for accommodating persons who have evacuated or deserted their homes on account of air raid is not one of the matters falling within the scope of the Municipal Acts. Rule 51F(2),however, provides that the provision of the rule and any order made thereunder shall have effect notwithstanding anything contained in any law defining the powers, duties or obligations of a local authority. Section 3 of the Defence of India Act, 1939,provides that any rule made under section 2, and any order made under such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act etc. Consequently notwithstanding anything contained in the Municipal Acts, in view of rule 51F(2)read with section3 of the Defence of India Act, 1939,thes orders passedby the Provincial Govt. under rule 51F(3) shall have effect and if the Municipalities fail to comply with with the orders of Govt. for taking measures for protection of persons and property under their control the Govt.may cause the measures to be completed and the cost thereof may be defrayed out of the Municipal fund. The view of A(H) appears to be correct.

Sd/-
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M.R
24/4/6

Office of the R.L.A.

Section 2(1) of the Defence of India Act, 1939 provides for power of the Central Government to make such rules as appear to it to be necessary or expedient for securing the defence of British India the public safety, the maintenance of public order or the efficient prosecution of war of for maintaining supplies and Services essential to the life of the community. Section 3 enacts that any rule made under effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Rule 81F(3) of the Defence of India Rules made by the Central Government under section 2 of the Defence of India Act provides that the appropriate Government may by order require any local authority to take within such period as may be specified in the order such measures as may be so specified, being measures which are in the opinion of that Government necessary for the protection of persons and property under the control or within the jurisdiction of such authority from injury or a damage, or for ensuring the due maintenance of the vital services of the authority in the event of hostile attack; and thereupon-

(a) it shall be the duty of the local authority to comply with the order,

(B) the funds of the local authority shall be applicable to the payment of the charges and expenses incidental to such compliance, etc.

sub-rule(4) gives power to the appropriate Government to cause the said measures to be taken or completed in the event of a default made by the local authority, and to direct that the costs thereof should be defrayed out of the funds of the local authority. "The appropriate Government" means in relation to local authorities other than cantonment or port authorities, the provincial Government (see sub-rule(1)of rule 51F).. sub-rule(2)lays down that the provisions of this rule and of any order made therunder shall have effect notwithstanding anything contained in any law or instrument defining the power, duties or obligations of a local authority.

2. It is clear from these provisions that the local authorities are bound to prepare the scheme as required by Government in the present case and in case of default Government is empowered to get the scheme prepared at the cost of such local authority. The view expressed by A(H) in his minute at page 1 ante is correct.

Sd/-
17/12

Remembrancer of Legal Affairs.

M.R.D
24/4/6

U.R. to H.D.(Spl.)-A.R.P. No.10913 dated 17th December 1941.

555 [illegible]

Office of the R.E.A.

The Government of India Notification No. Ad.-(P.C.) 7/41, dated 5th December 1941 and the order No.1/41. dated 11th December 1941 made by the Controller of Prices, Bombay, direct that wheat shall not be sold wholesale for spot delivery at prices higher than those mentioned in the Notification and the Order respectively. The Notificationand the Order apply only in cases where wheat is to be sold for spot delivery i.e. in cases where immediate delivery of wheat is contemplated. In the case of a forward contract no such immediate delivery is contemplated and the delivery is contemplated to be made at some future date. Consequently in case of such contracts, the Government of India Notificationand Order made by the Controller of Prices, Bombay, will not apply. The view taken by the Marwadi Chamber of Commerce, Ltd. appears to be correct. If it is intended that the Order issuded by the Price Controller should also apply to forward contracts, the words "for spot delivery" may be deleted from it.

2. It may incidentally be pointed out that caluse(1) of the Order made by the Controller of Prices, Bombay, is defective and the Order requires modification. This clause provides that wheat shall not be sold wholesale for spot delivery at a price higher than the price mentioned below. The clause refers only to sale by wholesale and not by retail. The table below the clause refers, however, both to wholesale and retail prices and it appears that th

~~and it appears that the~~ intention is to control both the wholesale and retail prices. In that case the word"sholesale" in the substantive part of the clause will have to be deleted.

Sd/-
15/12

Remembrancer of Legal Affairs.

Sd/-
15/12/41

U.R. to G.D.No.10812,dated the 15th December 1941.

M.R.D.
24/4/56

Office of the R.L.A.

The questions raised for consideration of the R.L.A. are:-

(1) Whether the Provincial Government can ask wheat merchants to declare stocks, and

(2) Whether the Provincial Government has the power to enforce compulsory sale at the maximum rates.

2. As regards the first question is may be pointed out that subsequent to the issue by the Central Government of the Government of India, Commerce Department, Notification No.501-Ind-Wa (19)/40,dated the 29th June 1940, rule 81 has been amended by Government of India, Defence Co-ordination Department, Notification No.899-S.M./41,dated 29th November 1941 and the Provincial Government has now under the amended rule all the powers specified in this rule. Under clause(a) of rule 81(2)the Provincial Government may by order provide, inter alia, for regulating the keeping, storeages,distribution, disposal, etc, of articles or things of any description whatsoever and in particular for prohibiting the withholding from sale, either generally or to specified persons or classes of persons of articles or things kept for sale and for requiring articles or things kept for sale to be sold either generally or to specified persons or classes of persons or in specified circumstances. Under clause(d) the dealers can be asked to keep such books, accounts and records as may be specified in the order. Clasue(e) specifically provides for

specifically provides for compelling the dealersx to furnish such information relating to their trade or business as may be specified in the order. The powers conferred by clasues(a),(d)and(e)read with caluse(f) of rule 81(2)are, therefore, very wide

M.R.D

and would enable the Proginicial Government to compel dealers concerned to furnish information to Government or to any authority specified in the the order as regards the stocks held by them. Thes These powers can be delegated by the Provincial Government under section 2(5) of the Defence of India Act to the Controller of Prices in Bombay and to the district magistrates outside Bombay.

8. As regards the secon question, the Provincia Government can by an order made under rule 81fix ~~maximum~~ mixmum rates and require dealers to sell any article kept for sale. Under Sub-rule(4)of rule81,any person who contravences the Pfovin~~cial~~ of any such order is liable to be prosecuted. It is thus possible to enforce compulsory sale of wheat at rates not higher than the maximum rates fixed by Government. Attention is in this connee ction invited to clause(2)of the order issued by the Controller of Prices,-~~Bombay~~ Bombay which requires that the dealers in wheat shall not withhold the said article kept for sale to any person on demand and on offer of the maximum price fixed.

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Remembrancer of Legal Affairs.

M.R.D.
24/4/56

U.R. to G.D.,No11018 ,dated the 20th December 1941.

NOTIFICATION.

General Department.

Bombay Castle, January 1942.

No. :-In exercise of the powers conferred by sub-section(5)of section 2 of the Defence of India Act, 1939(XXXV of 1939),the Government of Bombay is pleased to direct that subject to its control the following powers shall be exercised also by the Controller of Prices, Bombay, in the City of Bombay and by the District Magistrates in their respective districts-

(1)the power under clause(b)of sub-rule (2) of rule 81 to control the prices at which the articles mentioned in the schedule annexed hereto may be sold;

(2)the powers under clause(a)of the said sub-rule to prohibit the withholding from sale of the said articles kept for sale and to require the said articles kept for sale to be sold;and

(3)the powers under clause(f)of the said sub-rule-

(i) to compel the dealers concerned(a)to desplay or keep displayed in a conspicuous position in their shops or other places of business a copy of the order fixing the the maximum prices and (b) to issue a cash memorandum or other memorandum relating to the sale to a purchaser, and

(ii) to enter and inspect the premises the dealers concerned.

*To be filled in by G.D.

Schedule.

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P.T.O.

*To be filled in by G.D.

By order of the Governor of Bombay

Secretary to Government.

M.R.D.
24/4/56

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Office of the R.L.A.

The necessary draft notification is appended. The Government Order, General Department No.4747/33 dated the 22nd December 1941 is issued in exercise of the powers delegated to the Government of Bombay by Government of India Notifications No.501-Indt-War-(11)/40, dated the25th May 1940 and No,501-Ind-War-(19)/40, dated the 29th June 1940. These Government of India Notifications do not delegate powers in respect of the vegetables referred to in Government of India letter at page 1 ante. The delegation to the Controller of Prices and the District Magistrates cannot therefore be made in respect of the vegetables by amending the Government Order, General Department No.4747/33, dated the 22nd December 1941. A self contained notification providing for the delegation of the powers of the Provincial Government under the amended rule 81(2)is, therefore, sent herewith. Wheat flour may be included inthe Schedule to this notification. The G.D. should verify whether the draft notification carries out its intention.

2. As regards the question whether the form of the Government Order No.4747/33, dated the 22nd December 1941 requires any modification, it is true as pointed out in R.L.A.'s opinion No. 11018 dated the 20th December 1941that under the amended rule 81 all the powers under that rule are now with the Provincial Government. But the said powers are also with the Central Government and as they have ~~already been delegated to the~~

already been delegated to the Provincial Government under Government of India Notifications No.501-Ind-War-(11)/40, dated the 25th May 1940 and No.501-Ind-War-(19)/40. dated the 29th June 1940, it is competent to the Provincial Government to exercise the powers under the said rule M.R.D.

(5) 65 69

in ~~xhxx~~ virtue of the aforesaid Government of India Notifications so long as those notifications are not rescinded by the Central Government Consequently, unless and until the Government of India Notifications referred to are rescinded no modification in the form of the Government Order No.4747/33, dated the 22nd December 1941 would be necessary.

N.R.D.
24/4/56

Sd/-
3/1/42

Remembrancer of Legal Affairs,

U.R. to G.D., No.28 dated the 3rd January 1942.

DPP
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send
27/4